



Modern Slavery Act 2015 Committee

Corrected oral evidence: Modern Slavery Act 2015

Monday 11 March 2024

3.30 pm

Watch the meeting

Members present: Baroness O'Grady of Upper Holloway (The Chair); Baroness Barker; The Lord Bishop of Bristol; Baroness Butler-Sloss; Baroness Hamwee; Lord Hope of Craighead; Lord Kempson; Baroness Shephard of Northwold; Lord Smith of Hindhead; Lord Watson of Invergowrie; Lord Watts; Lord Whitty.

Evidence Session No. 4

Heard in Public

Questions 53 - 70

Witnesses

I: Julian Bild, Solicitor, Anti-Trafficking and Labour Exploitation Unit (ATLEU); Professor Alex Balch, University of Liverpool; Professor Louise Waite, University of Leeds; Dr Marija Jovanovich, University of Essex.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Julian Bild, Professor Alex Balch, Professor Louise Waite and Dr Marija Jovanovich.

Q53 **The Chair:** Good afternoon and welcome to this public evidence session of the Modern Slavery Act 2015 Committee. My name is Frances O'Grady. I am Chair of the committee. I should alert everybody to the fact that we may have votes. There will be a short interval while we suspend, returning in about 10 to 15 minutes. We hope to get through the first panel before that.

I welcome our panel. Julian Bild is a solicitor with the charity Anti-Trafficking and Labour Exploitation Unit, joining us on Zoom is Professor Alex Balch from the University of Liverpool, Professor Louise Waite is from the University of Leeds, and Dr Marija Jovanovich is from the University of Essex. Thank you all for coming to speak to us.

As you know all too well, modern slavery is a hidden crime and is not always well understood. It would be good to hear how each of you assesses the current public perception of modern slavery, particularly how it interacts with immigration and whether, without wishing to jump ahead, there is a hostile environment for migrants that means that some victims of modern slavery are often disbelieved. If so, is that getting better or worse?

Professor Louise Waite: Thank you for inviting us today. Modern slavery, as we all know, is hidden, by its very nature. It is important—I am sure we will explore this—to recognise the role of government narrative in framing public understanding of modern slavery. The Brexit referendum put immigration right at the top of the political agenda. As that continued through various Administrations, there is now a more strident strategic conflation of modern slavery with immigration. Public perception cannot be seen aside from that.

The hostile environment is a broadly anti-migrant environment. The structural context is important to understand. Hostile exclusionary and racialised violence in the UK is creating vulnerabilities for migrants and making precarity and therefore extreme exploitation more likely.

I am sure we will hear from my colleagues about the importance of research in this area. My colleagues and I at the Universities of Leeds and Sheffield are involved in a large research project called Precarious Lives, which precisely applies the framework of precarity and hyper-precarity to try to understand some of the exploitation experiences, including ideas around the tunnel of entrapment—not only labour vulnerabilities but immigration status with the state and government as third-party exploiters.

On the questions about disbelief, that is tied to the state narrative, which percolates into public perceptions.

Dr Marija Jovanovich: I agree that it is not well understood. I am not sure about public perception, because that would require empirical research to know about. I agree with Louise that a narrative is being created in public that we all hear. The November 2023 report of the Home Affairs Committee mentioned the conflation of modern slavery and human trafficking and illegal or irregular migration. That is quite surprising, because 24 years ago the UN adopted two different legal instruments: the smuggling of migrants protocol and the trafficking in persons protocol. It set a clear distinction and different set of measures to be applied in each context. Whether that was intentional or unintentional, at least here in the UK, and perhaps in the rest of Europe, there is increasing conflation of the two issues, and that is probably reflected in public perception.

Professor Alex Balch: Thanks for having me and for accommodating the fact that I am out of the country and cannot be there in person.

I echo my colleagues' comments. It is worth reflecting on the history of anti-trafficking and, now, modern slavery policy. We had human trafficking legislation before the Modern Slavery Act 2015. Immigration has always been intricately tied up with this issue. It is nothing new, but there has been a difference in tone in the past couple of years, as we saw in the Nationality and Borders Act and Illegal Migration Act. You are right to point to the hostile environment. We are now aware of the hostile environment or the compliance environment policies around immigration more generally, but there has definitely been increased application in relation to modern slavery. Victims and survivors used to be excepted from some of the worst political rhetoric on migrants but have now been co-opted into it through the understanding of abuse of the system. That is quite new and has echoes of the way asylum seekers were discussed politically in this country in previous decades.

It is not based on evidence, and I am sure we will get to that in more detail later, but the effects are significant. The public hear the message from politicians that people are lying about their exploitation, and they suspect that the modern slavery system of protection is being used to avoid or evade immigration controls. There is very little evidence to back that up. It is potentially harmful and dangerous, particularly for the most vulnerable individuals who have been exploited in the UK or outside the UK and need protection from the Modern Slavery Act but who are now at risk of not getting it because of the change in tone.

Julian Bild: ATLEU is a visible charity. We have not seen any kickback from the public for the work we do. In fact, quite often members of the public ring us because they are worried that perhaps someone is being exploited. We were as shocked as everyone else to see in March 2021 the *New Plan for Immigration*, in which the Home Secretary wrote of "child rapists, people who pose a threat to national security and illegal migrants who have travelled to the UK from safe countries have sought modern slavery referrals, which have prevented and delayed their removal or deportation". There is clearly an attempt there to equate people who

have been exploited not just with immigration offenders but, beyond that, with child rapists and terrorists.

However, we do not think that has played out with the public. By and large, this group is pretty invisible. We have seen it play out massively in relation to outcomes, with between a 300% and 400% increase in negative identification decisions. We have seen a decrease of about 300% in the number of victims of trafficking given leave. We have a relatively new regime since the beginning of last year called temporary permission to stay as a victim of trafficking. Almost none of our clients, however vulnerable they are, are getting the leave, even though we are quite robust litigators at ATLEU. In one case, someone might second-JR¹, because initially we got the Home Office to accept that our client had recovery needs. That was the first judicial review. It accepted that and conceded that judicial review, but now it says that he can get the treatment in Ethiopia, where there is one single public facility offering psychiatric care.

We are seeing a massive toughening up by the Government, and to that extent there is clearly a hostile environment, but, to answer your initial question, we do not think it is driven by the public. We are not seeing those perceptions among the public.

- Q54 **The Chair:** There has been a lot of discussion in academic literature over many years about the extent to which different government agencies, NGOs and voluntary organisations have been co-opted into policing immigration. Do you have any comments on its practical impact on modern slavery?

Professor Louise Waite: I can kick off with a bit of a response, based, again, on many research projects.

You might be aware of the phrase “everyday bordering”. It is used in critical migration studies to refer exactly to what you were detailing—the widening of the immigration enforcement net beyond the traditional enforcement agencies. From research done by my colleagues and me, I can say that the implications for vulnerable migrants are a break in trust and deep anxiety about putting your head above the parapet. As we all know, this is quite often a shadow-like existence, with people trying to avoid the ravages of destitution and below-poverty levels of survival. Reaching out to a person who might be able to help is an immense act of bravery when you are not sure who might shop you to immigration enforcement. The ever-widening net has seen some very damaging outcomes for people who are the most vulnerable in our society.

The Chair: I should have added that that includes, for example, transport workers and other groups.

- Q55 **Lord Whitty:** Is there a difference in public perception between types of slavery sector by sector? The public might be prepared to accept that

¹ JR is an acronym for Judicial Review.

there must be slavery in prostitution or domestic service, but less likely to believe it in relation to things that are relatively mainstream.

Julian Bild: I am sorry. I just do not have the statistics to gauge that, and I have not seen any research on it.

Professor Louise Waite: Alex talked about the history of public awareness, fuelled partly by some of the anti-trafficking sector's efforts in certain types of exploitation. The sex work area has been prominent, overlapping into prostitution, agentic or not. There has been labour exploitation in certain sectors, focusing on car washes or nail bars, which has had a higher profile in the public's eye at one time or another.

From research I have been involved with, I think there is concern about people who do not garner the attention of an organisation that might be trying to fundraise in a particular area—somebody perhaps with alcohol or drug dependency who is living on the street and is immensely vulnerable in manifold ways might not figure as highly in somebody's sympathetic response to vulnerable victims. As Julian said, there is a paucity of detailed research in this area.

Q56 **Lord Hope of Craighead:** We are all aware of what Professor Waite describes as the Government's narrative. Is it based on evidence? The Government tell us that they have published a number of case studies. The papers before us contain two examples, one of which is quite striking. Two individuals did not initially claim asylum. They had arrived by small boats and were targeted for return to Albania. They then did claim asylum and were in detention for quite a long period. Eventually, they were released, went back to the continent and turned up in Belgium, where they were arrested on trafficking charges. At first sight, that is quite a striking example. It is only one example, but presumably there are one or two bad apples in the box or the barrel, or whatever you call it.

Dr Marija Jovanovich: That is a great question. Little or no evidence has been shared with us about the so-called abuse of the system. The Government published statistics on the NRM in 2023 and included the so-called "bad faith" disqualification—disqualification from protection based on bad faith when victims or somebody close to them has knowingly claimed victim status that is not true. There have been zero bad faith disqualifications in 2023. Surely some would show in those statistics if the examples you cite were more widespread. Of course, it is always possible to find one or two examples of abuse, but there is absolutely no evidence that we have been shown of widespread systematic abuse.

Professor Louise Waite: I support that. The Government quite often cite the increased number of modern slavery referrals as a reason to support that argument. That is a bit disingenuous, because it might refer to fantastic increased awareness among first responders rather than abuse of the system.

It is also unhelpful not to disaggregate referrals from British citizens, who have permission to stay in the UK, as well as those who do not, as a reason for this argument.

Likewise, the Government have claimed that there is a problematic increased number of people being referred from immigration detention and FNOs—foreign national offenders. As the previous Independent Anti-Slavery Commissioner has said on record, that is also fairly dubious—Julian will perhaps support this—because people might have good reasons for disclosing late, such as fear or not having sufficient legal advice. Late disclosure does not automatically equal unreliability.

The Government are also very concerned about small boat arrivals, linking them possibly to disingenuous modern slavery claims. Between 2018 and 2022, according to government statistics, only 7% of people arriving in small boats were referred as potential victims of modern slavery, and 85% of them were confirmed by the Home Office as victims, which is broadly in line with all referrals for modern slavery.

The Government also say that the modern slavery system—and we are seeing this bleed across from the asylum system over many years—and NRM protections are disincentives to making these often incredibly dangerous journeys. There is absolutely no evidence of that. Indeed, a Home Office publication in 2020 on sovereign borders, looking at those who seek asylum, stated irrefutably that it does not have accurate knowledge of welfare or immigration policies in destination countries. That is very much the same for potential victims of modern slavery.

Lord Hope of Craighead: You are pitching it quite high when you say that there is absolutely no evidence. Can you really stand by that, given the examples that have been given—in particular, the one to which I referred?

Professor Louise Waite: I should correct my wording about widespread robust evidence beyond a couple of cases.

Lord Hope of Craighead: Those particular cases should be put in context.

Professor Louise Waite: Yes.

Lord Hope of Craighead: Taking the pattern that we get as a whole, there might be one or two examples that might be flushed out, but you would say that it is quite unfair and quite unjustified so to characterise all of them.

Professor Louise Waite: Indeed.

Lord Hope of Craighead: I am putting words in your mouth.

Professor Louise Waite: No, perfectly.

Lord Hope of Craighead: Do you have anything to add, Mr Bild?

Julian Bild: We at ATLEU do not vet our clients. We do not make sure that they are not gaming the system before we take them on. We get to know our clients very well indeed and we do not find that any of our clients are gaming the system.

We have seen no one disqualified on bad faith grounds, as Marija said: not a single person. We have seen quite a lot of people disqualified on public order grounds because of their convictions, including many who have been found to be subject to criminal exploitation. Trafficking is being thrown back at them to deny them the support or protection they need. They are not being given the conclusive grounds decision at the end of the process, so how will we know whether they are genuine victims of trafficking? They are effectively kicked out of the system at the point when they get their reasonable grounds decision: "We think you might be a victim of trafficking, but you've got a conviction. Go away". How will we get the statistics to know how many of those people are genuine victims of trafficking? I can talk only from our personal experience of not seeing any clients who are gaming the system.

Lord Hope of Craighead: Professor Balch, do you have any points to make on whether, in your experience, the Government's position is justified?

Professor Alex Balch: I agree with the panellists and emphasise the complexity of cases. There will be cases where someone says one thing, then says another and retracts. That could be due to the trauma they have experienced. It could also be because they are gaming the system. You have to understand why a small number of people might do that and think about how these systems are operating—or not operating—and how they interconnect with one another. The asylum system is so under pressure. People are in awful situations and face impossible dilemmas. Pushing people into "genuine" or "non-genuine" is a somewhat simplified binary when most cases are very complicated and involve criminality, which they might have been forced into. There are connections with other parts of the system that might be failing.

Q57 **Lord Hope of Craighead:** The Government said that they would welcome guidance on the statistics that they should make available. What advice would you like to give them? Try to be as specific as you can be about the things on which they should be focused.

Julian Bild: If I had one statistic, I would like to see those who have positive decisions who have legal representation and those who have positive decisions without legal representation. The whole system is being squeezed, which means that we are having to draft detailed statements, get witness evidence, get medical and legal reports, seek reconsideration and sometimes seek judicial review. Our clients succeed, but we are aware that perhaps more than 50% of victims are unrepresented. They are not able to provide statements. They are not able to seek reconsideration or run legal cases. If possible, I would like to see the numbers of those represented, of those not represented and their outcomes.

Dr Marija Jovanovich: The Government lack transparency in many data on modern slavery. You might know about the so-called non-punishment principle, the provision that is meant to protect those who are compelled to commit criminal offences. There was a judgment from Strasbourg three years ago. In their action plan in response the Government committed to publishing data on applications so that we know how many people have used it and why people have been refused. We know nothing about that.

In your previous session public officials talked about how difficult it is to conduct international investigations. We do not have data on how many international investigations or requests for mutual legal assistance have been made or processed. There is a lack of data on legal assistance, which according to some anecdotal evidence is notoriously difficult for victims to access. It is one of the so-called procedural rights. They are a pre-condition for anything else. There are significant gaps in the data in being able to assess the situation.

Professor Louise Waite: I have five points. The first has been mentioned—Section 45—so I shall drop that.

Secondly, it would be useful to have data on people who are in the asylum system and the NRM simultaneously, because it would help us to understand the impact of those two processes, which have huge overlaps, as we know.

Thirdly, the Government produce irregular immigration statistics. We mentioned the small boats concerns. In the first two quarters of last year we had data on the number of referrals occurring simultaneously with small boat arrivals, but inexplicably it has been locked out for the second two quarters of 2023. That would be very helpful.

Fourthly, it would be great to have more data on who is accessing support under ECAT, the modern slavery victim care contract—things like details on safe care housing, counselling, refusal grants of continued support, and so on.

Lastly, thinking expansively, more data would be great on the driving factors, the root causes, of modern slavery. In attributing growing numbers of modern slavery referrals to abuse of the system, the Government have shifted political resource away from their duty to interrogate some of the driving forces exacerbating exploitation. We already know about some of the phenomena, including NRM cases linked to tied visas—the seasonal agricultural workers programme, the overseas domestic workers visa, the health and care worker visa—which can move down the slippery slope of not being able to escape exploitation. We need more data on those too.

Q58 **Baroness Butler-Sloss:** I declare an interest as co-chairman of the parliamentary group on modern slavery and vice-chairman of the Human Trafficking Foundation.

The Home Office produced statutory guidance—in particular, in 2019—in

which it set out victims' problems, including what Mr Bild was talking about: the telling of a different story. That was accepted, was it not, in the Home Office's earlier guidance?

Dr Marija Jovanovich: Even the current version of statutory guidance on modern slavery explains very well what motivates victims to disclose information very late and how to deal with trauma. So, in a way, that guidance contradicts the official narrative. It clearly lays out the reasons for late disclosure and how it should be dealt with.

Baroness Butler-Sloss: I wanted that to be on the record, because what the Home Office is saying is completely different from the narrative of Ministers.

Dr Marija Jovanovich: Yes.

Q59 **Baroness Hamwee:** We are now told that there has to be credible evidence. Will that be harder if there is no legal representation?

Julian Bild: Absolutely, because there is no mechanism for a potential victim to provide that additional evidence. We are seeing the competent authorities writing to unrepresented people asking for legal statements. Of course, some of them will be illiterate. Very few of them will understand trafficking law, and therefore what they need to put in that statement, or the need for accuracy, finding professional interpreters and what have you. A competent authority will sometimes ask support workers to provide those statements, which puts them in conflict with the people they are trying to support. They have to take that quasi-legal role, asking them in detail about their background, their life, their trauma and any discrepancies that might have arisen in their accounts.

There is no mechanism for providing that additional information or for getting doctors' reports or psychiatric reports. Yes, where someone is effectively represented they can provide that, but otherwise they will not get off the starting blocks. They will get a negative decision. We are seeing a large increase in negative decisions. Authorities do not say, "You're lying". They simply say, "We don't have enough information to decide that you're telling the truth". We say, "Why not interview them?" They are not doing that. They will not interview victims. They will make a decision on the basis of information that lands on their file, but it will not land on their file if no one is supporting the victim.

Q60 **Baroness Hamwee:** You used the term "conflation". I cannot think what the opposite of that is. Are there any distinctions between international and domestic law? We are signed up to quite a bit of international law, but are we in danger, particularly through recent legislation, of breaching that law?

Dr Marija Jovanovich: Absolutely. It is really important. The international legal obligations pertaining to modern slavery have not featured much in the discussion of immigration legislation, or at least I have not seen it in the explanatory material accompanying the treaty with Rwanda, the Safety of Rwanda Bill, which devote no attention to

these obligations under modern slavery legislation, despite the significant impact of this law on victims.

Even the Supreme Court decision analysed the impact and implications of Articles 2 and 3, the right to life and the prohibition of torture, but they do not discuss the implications for the UK's obligations under Article 4, which prohibits slavery, servitude and forced labour. That is a huge gap. There is a lack of understanding of the nature and scope of these legal obligations, as well as the impact of the recent legal and policy measures on such obligations.

I do not want to give a lecture—I am pretty sure you all know that—but I reiterate that, in a nutshell, all this legislation does is create a hierarchy of victimhood. It excludes from protection victims with irregular immigration status or those who have been involved in criminal offences. They are excluded from all protections under the Modern Slavery Act. Not only is there no legal basis for that in international law, but those international obligations provide specific additional protections for victims, both with irregular immigration status and those who are found to have been compelled to commit criminal offences. I can answer in more detail if there is interest.

International law requires the further protection of those whom recent legislation seeks completely to exclude. Some of these provisions are a manifest breach of international obligations. There is no question about that. Others are capable, such as the obligation to investigate and prosecute human trafficking offences. Of course, that would likely be affected in practice, but on its face the legislation is not incompatible. It has very serious consequences.

Q61 Baroness Hamwee: There is interest but less time. On your point about the courts not going beyond the first couple of articles under the Human Rights Act, the ECHR, is there anything that anybody would like to add? I know that the Chair will want to continue on the same theme.

Julian Bild: Absolutely. We say that we see the Government departing from ECAT substantially, particularly in regard to disqualification and grants of permission to stay in the UK. Although the guidance purports to uphold the decisions in ECAT, it does not. The difficulty we have as lawyers is that because it is an unincorporated treaty it is more difficult for us to litigate.

Right up to the Supreme Court, for instance, all the courts have said that under the convention someone should be entitled to permission to stay while they are waiting for their asylum claim to be concluded. Once they have their positive, conclusive grounds decision, there may be a few months, or years, until their asylum claim has been concluded. The Government were granting that leave up to 31 January 2023, and then stopped. They have now decided that they are upholding the convention, but that that provision is a voluntary provision that they can simply choose, on a policy basis, to ignore. Yet the provision in Article 14 says "shall grant". It is written in the terms of a mandatory provision.

Q62 **Lord Kempsell:** I want to come on in a little more detail to the interaction between the Illegal Migration Act and the Modern Slavery Act. We have touched on it. I will ask a specific question. Dr Jovanovich might have done some work on this that I have read. Is there an estimation of the number of potential victims of modern slavery who may be denied protections precisely because of provisions in the Illegal Migration Act?

Dr Marija Jovanovich: I would like to pass that question to Alex, or others who have done more work on the evidence and the data. I am not entirely sure that we have, but I know that PEC has done so.

Lord Kempsell: I know that the Modern Slavery and Human Rights Policy and Evidence Centre said that due to limited data it would be “challenging to put a precise figure on how many potential victims of modern slavery will be deprived of protections by these provisions in the Act”—that is, the Illegal Migration Act.

Professor Alex Balch: Is that the explainer?

Lord Kempsell: Yes.

Professor Alex Balch: Elsewhere in there we suggested that it could run to thousands if we consider that this will affect anyone who arrives through an illegal mode of entry.

We have done some research on the duty to notify data, which could be a good indicator. Duty to notify data does help because that is when people choose not to go into the NRM. We need more data on the reasons given for non-entry into the NRM. We do not have specific numbers, because it is complicated. In a sense, you are asking us in a sense to predict the effect of measures that have not yet fully come into force. If you pushed me up against a wall and asked me to predict, I would say that it could affect thousands.

Q63 **Lord Kempsell:** I am sorry I misdirected my question. I was confusing some of the earlier comments from Dr Jovanovich on data, which I am particularly interested in.

Taking those points together, if we do not have satisfactory data to be able to predict the impact of the Illegal Migration Act or modern slavery provisions, how should we move forward with recommendations for policy developments from the Government? The Government have passed this legislation, so what can they now practically do to address that problem that is being raised?

Julian Bild: They could decide not to enforce provisions that bring victims of trafficking directly into the privations provided under the Illegal Migration Act. The section on victims of trafficking says that if they meet the criteria in Section 2—in other words, they have arrived irregularly—once they have their reasonable grounds decision they will no longer have any support or protection from the NRM.

I saw some statistics—I have been looking for them but cannot find them—that between 2019 and 2022 some 6,000 people arriving on small boats were referred into the NRM. It will not just affect those arriving on small boats. It will affect all those who arrive irregularly. It will be those brought here on fake visas by their traffickers or in the back of a lorry. The only people it will not affect are those who arrive regularly—domestic workers coming on domestic worker visas, care workers coming on care worker visas and agricultural workers on seasonal visas. For everyone else trafficked here, it will usually be by deception. The traffickers, working with smugglers, know how to get people across borders. They will not get the support of the NRM.

Professor Louise Waite: Alex spoke about it being difficult to predict. I think there is also an underemphasis. You asked specifically about the Rwanda Bill. NABA has already had significant impacts. It has seen a fall of positive RG decisions in 2022 from nearly 15,000 to only just over 8,000 in 2023. That is nearly a halving. The number of adults eligible to access protection has fallen to its lowest since 2018.

RG decisions have increased roughly tenfold. There is a great fear in the sector that many people who have not been able to access protection may just give up or may not even try because of the environment that is now operating. So, yes, there are some real concerns about the NABA, not only about the Illegal Migration Act and the Rwanda Bill.

Julian Bild: An incredibly powerful way for traffickers to maintain control over their victim is to say, “If you escape from us, they’re going to send you to Rwanda”. That is a real concern.

Q64 **Baroness Butler-Sloss:** I want to move to Section 45 and the evidence defence, and the extent to which victims are currently being denied the protection. I was particularly interested in whether Schedule 4 should be amended, particularly because of the point that has already been raised about people being forced to commit offences. I think Dr Jovanovich has done some research on that.

Dr Marija Jovanovich: I have, yes. I would also refer to the findings of GRETA, which is in charge of overseeing the UK’s compliance with the anti-trafficking convention. The report was from 2021, before all the recent developments. GRETA criticised the Government for creating such a wide number of offences that are excluded, and expressly said that any offence should be capable of leading to non-punishment if a person is compelled and has no criminal intention, which is required for conviction. So it is useless to punish them.

Schedule 4 contains over 100 offences—for instance, facilitation of unlawful migration or the offence of modern slavery itself. We know that people are often compelled to engage in modern slavery and trafficking others. The short answer is yes.

Q65 **Baroness Butler-Sloss:** How effective, if at all, is the CPS guidance as a result of the Strasbourg case?

Dr Marija Jovanovich: On its face, the CPS guidance is fine. GRETA has found many other aspects of the UK's system to be satisfactory. The question is how it is applied in practice. As I mentioned earlier, there is a lack of data. We simply do not know. In our informal conversations earlier, Julian mentioned how in many cases barristers do not advise people to ask for this defence to be applied, so we simply do not know.

Baroness Butler-Sloss: It really looks as though lawyers, solicitors and barristers, and possibly some judges, need to have some training.

Dr Marija Jovanovich: Absolutely. That is amplified by the Strasbourg court.² Even though it focused on police and prosecutors, it emphasised that in many cases barristers and defenders were unaware of this defence and were not using it.

Professor Louise Waite: I was recently at a workshop with far more eminent people than me. The message about the CPS guidance seemed to be that multiple bodies, as you indicated, need to be proactive to promote a broader understanding. That includes the Judicial College and training being made available to judges.

As we have heard, the application of this is key, and it needs to be much more multi-pronged than it is at the moment. Another colleague of mine at Leeds advised that the guidance may not increase the application of Section 45 because it focuses on the complicated legal developments around some of the arguments rather than the practical application.

Professor Alex Balch: There have been several inquiries and judge-led investigations into the Section 45 issue. None of that has been particularly rigorous or systematic in providing any data, as my colleagues have said. We need to collect the data to find out how this is being applied in practice, and then use that for training.

Julian Bild: We are not criminal lawyers, but our experience is that many of our clients are identified by the police as possible victims of trafficking and referred by the police into the NRM. Their cases go to the CPS, at which point no one knows whether they are victims. They might have received a reasonable grounds decision by that point, but neither the CPS nor the police are really that interested in deciding whether they are victims of trafficking—that is for the NRM at a later date, which might be three years down the line, by which time people will have been prosecuted. They have not been helped to run that defence. They have been convicted very often because they have pleaded guilty. We are then left with some of the two or three criminal lawyers in the UK who will know how to try to unravel all that with appeals and reviews and what have you. We find that many of our clients are prosecuted, and then get their positive trafficking decision. It is then very difficult to unroll all that.

Q66 **Lord Watson of Invergowrie:** Can I pick up on the point that Mr Bild made about some of them pleading guilty? Is that due to pressure,

² In its judgement of the case of V.C.L. and A.N. v United Kingdom, 2021.

whether moral or some other kind of pressure?

Julian Bild: Overwhelmingly, they are told that if they plead guilty they will get a lesser sentence. It would be something very big for a defence lawyer to step back and say, "We're going to prove to the judge or the jury that you're a victim of trafficking". That is a bit of work we do not think they have the time, the money or the experience to do: to persuade the judge or the jury that someone is a victim of trafficking. It is something we do. It takes us many months. It just does not seem to be practical, as far as the system is concerned, to run those defences.

Baroness Hamwee: They need the training before it even gets to the CPS. Do the police need to become more aware of the defence?

Julian Bild: We see quite a lot of people referred by the police into the NRM, so they are picking up on indicators, but they are not doing anything beyond that. They are filling out the NRM referral form, but they are not then really investigating what has been going on.

Q67 **Lord Watts:** Despite improvements made in recent legislation, including the Modern Slavery Act, some of the UK's modern slavery framework is not on a statutory footing. What is the impact of this? Which parts of the Act would you like to see on a statutory basis, and why?

Julian Bild: We would like the whole of ECAT, as it is written, put on a statutory basis, in a similar way to the ECHR. They are both Council of Europe conventions. They both carry equal weight internationally. We think it is wrong that ECAT appears only in guidance and rarely in statutory form. We would like to see ECAT included.

Lord Watts: What are the practical implications of it not being included?

Julian Bild: The Government can currently bring about their own interpretation of ECAT, enshrine it in guidance and then not give the judges an opportunity to interpret for themselves what ECAT says, because they are, of course, bound by statutory provisions that we say narrow the remit of ECAT and by what the guidance says. We would like judges to be able to take their own view of the regime that the Government should be providing to protect and support victims.

We are seeing, for instance, the provisions for leave to victims of trafficking in Section 65 of the 2022 Act significantly narrower than ECAT. Of course, they will be binding on judges. The judge will say, "If it was my job to interpret ECAT, we've done that right up to the Supreme Court, and you're entitled to leave, but I am afraid that Section 65 says you're not entitled to leave, so you don't get your leave".

We think that enshrining ECAT so that judges can interpret it and apply it would have significant benefits. We would lose, for instance, public order disqualification. The convention allows us to deny support to those who are such a danger to the community that they have to be deported. There is no requirement in the convention to support and protect people who are a danger to the community. The statute has changed that to

public order disqualification. Punishing people by not supporting them simply because of their convictions again is a breach of the non-punishment clause in Article 26 of the convention, but because it is not enshrined in statute it is harder for us to make those arguments in court.

Lord Watts: So that we are absolutely clear, some people might think that the fact of it not being in the statute gives judges more flexibility in how they interpret the legislation. I think you are saying that that is not the case, and it would be interesting to know why.

Julian Bild: I have in mind Article 14.1. It is a bit of an obsession of mine. This is where someone is entitled to stay in the UK for a temporary period, where it is necessary due to their personal circumstances. That is quite a broad provision. It might be necessary because of mental or physical health problems, or because they are waiting for the conclusion to their asylum claim. We have a provision in statute that says, "You will be entitled to leave if you need help with recovery, if you are seeking compensation or if you are helping the public authorities, but not for other reasons related to your personal circumstances".

They have massively narrowed what we have always understood to be quite a wide provision in ECAT. Where we can come up with compelling reasons why someone should be given temporary permission to stay, we now have to fit them into these very narrow statutory categories rather than that broad facility in the convention, which is "where it is necessary due to their personal circumstances".

We would like to see a provision that states that the Secretary of State must grant leave where it is necessary due to someone's personal circumstances, not defining that in a way that they are not entitled to do under the convention so that it effectively makes our position in court very much more difficult. We say that ECAT prevails. The Home Office says, "No, it is not in domestic legislation. This is what we have put in the legislation. We have interpreted ECAT more narrowly". That is an example on my mind.

On public order disqualification, Article 14 of the convention states that you do not have to provide the support and recovery period where it is prevented by public order considerations. It is the idea that someone is such a risk to the public that they must be deported. That must be the object of public order disqualification: you must remove these people. They are not being removed. They are just being left here and punished because they have a conviction.

We would like to see it in statute that they are not entitled to the recovery period if the Government are prevented on public order grounds from providing that support, not that if someone has a conviction we are going to punish them by not giving the protection and the support they need. There are real provisions in the statute that so narrow ECAT that we say they would clearly be in breach of it.

Dr Marija Jovanovich: If the Modern Slavery Act and guidance are seen in isolation, I would not object. There are reasons for flexibility and allowing judges to interpret the convention in cases. Referring again to GRETA's findings from 2021, before all these legal changes, GRETA said, "Through its strong measurements to identify victims, the UK is setting an important model for Europe". It was quite pleased with how the system worked, including the guidance and the Modern Slavery Act.

What Julian mentioned is true. When something is not on a statutory footing, nothing stops the Government adopting another law, as is the case here, to exclude certain categories from protection. It is then really difficult for judges to override statutory provisions by referring to guidance and including the public order disqualification.

Now that we have mentioned it, I want to refer back to the discussion on Schedule 4 that Baroness Butler-Sloss mentioned. Schedule 4 excludes a large number of offences from the application of this non-punishment principle. Public order disqualification goes well beyond that, so not only are these people now excluded from not only punishment but they are excluded from any protection. There is absolutely no legal basis in ECAT for that. If ECAT's provisions were embedded in the Modern Slavery Act, the only way of creating a public order disqualification in this form would be to repeal the Modern Slavery Act. It is much easier this way.

Q68 **The Chair:** If you could make just one, brief recommendation to government on the Modern Slavery Act, what would it be?

Dr Marija Jovanovich: As in a recommendation on how to change the Act, or how to change practice?

The Chair: You choose.

Dr Marija Jovanovich: I would say that people should first be seen as victims. Victim status should override and precede status as an offender or illegal immigrant. If the order of decisions is such that somebody is first established to be a victim of modern slavery, and then whether they have been compelled to commit criminal offences and whether they have arrived legally, all these other assessments need to come after. The legislation currently excludes them from determination of victim status at a very early stage. That would be my recommendation.

Professor Alex Balch: My request would be for the Government to produce a strategy. If the Modern Slavery Act required the Government to publish their strategic approach to preventing modern slavery, that would be a big step forward.

The Chair: That is a very modest recommendation, if I may say so.

Professor Louise Waite: I have a slightly more ambitious out-there request. In the victim care contract, non-UK survivors should have the right to work—alongside asylum seekers, by the way—and to study. These basic measures are imperative to ensuring that dignity remains at

the heart of the NRM and that transitioning out of the NRM does not leave survivors with a cliff-edge drop-off of support.

The Chair: Excellent, thank you.

Julian Bild: ATLEU would like to see a civil remedy for victims of trafficking. This was mooted during the 2015 Act, but it was felt that existing torts—existing forms of compensation—were adequate. They have not been. It is very difficult to claim damages off a trafficker under the existing regime. We would like to see a regime that allowed our clients to seek compensation from their traffickers for being exploited, rather than having to fit them into existing torts, which might be violence, assault, kidnapping and that kind of thing.

The Chair: Thank you. Do any of my colleagues have any last points?

Q69 **Lord Whitty:** Is there anywhere in the world that has followed us down the modern slavery road and done it better than us, in either the law or enforcement? Is there anywhere that you would cite as doing it better?

Julian Bild: I have no idea, I am sorry.

Professor Alex Balch: There is some interesting best practice elsewhere in relation to the governance and the strategic approach to prevention. The US has recently indicated a move towards a more preventive approach; the involvement of those directly affected is better integrated in other contexts. How are the people who are directly affected involved in working out the best thing to do? We are only just beginning to think about that in the UK, and we could do much better at involving those with direct lived experience in all aspects of our response. There are pockets of best practice elsewhere, but, no, I would not point to another country as having the right response, so far.

Q70 **Lord Hope of Craighead:** May I come back to your recommendation, Dr Jovanovich? I am not quite sure that I understood what you said. I think you said that victims should get some priority in the way they are treated by the system. The problem, from a lawyer's point of view, is that, first, you have to establish that you are a victim—it is not enough simply to claim that you are; the law would expect you to prove it. I am not quite sure how that would fit into your scheme.

Dr Marija Jovanovich: Proof is quite a strong word. The threshold for triggering state obligations that bind all public authorities—not just the police—is very low. The threshold is met when there are reasonable grounds to believe that a person is a victim. There has been a lot of discussion about where that threshold sits—what kind of evidence; but there are examples where that standard has been used by the police—for instance, in exercising stop-and-search powers. Given the knowledge about the indicators of modern slavery, even that embedded in the guidance, and about how victims present, what kinds of traits they display, and the 20-plus years of experience, it should not be difficult for all public authorities to be alert to these indicators.

When there are reasonable grounds to believe that the person could be a victim, that triggers all the protective obligations, and at that point all other things should come second. Whether a person has been involved in a criminal offence or has arrived in the UK illegally should be linked to that investigation; that should all be part of the same assessment. At present, they are expelled from this determination, and it matters only whether they have committed a criminal offence or arrived irregularly.

Lord Hope of Craighead: I absolutely understand the test that you are suggesting, but it is not in the statute at the moment, is it?

Dr Marija Jovanovich: The test is in ECAT and, even though ECAT is not directly embedded in British law, almost all protective obligations have been embedded in Article 4 of the ECHR, which is part of British law by virtue of the Human Rights Act. Article 4 contains a broad set of standards and guidance, and the Strasbourg court has interpreted it in a very specific way by bringing into its scope those specific duties and the threshold. They call it either credible suspicion or reasonable grounds to believe. So it is part of domestic law.

Lord Hope of Craighead: Perhaps it should be more clearly stated in domestic law.

Julian Bild: I think those thresholds, the reasonable grounds and the conclusive grounds decision, are in the MSA.

Dr Marija Jovanovich: They have now been brought in through the Nationality and Borders Act. Some of that is included.

The Chair: I thank everybody, online and in the room, for giving up their time. It is very much appreciated.